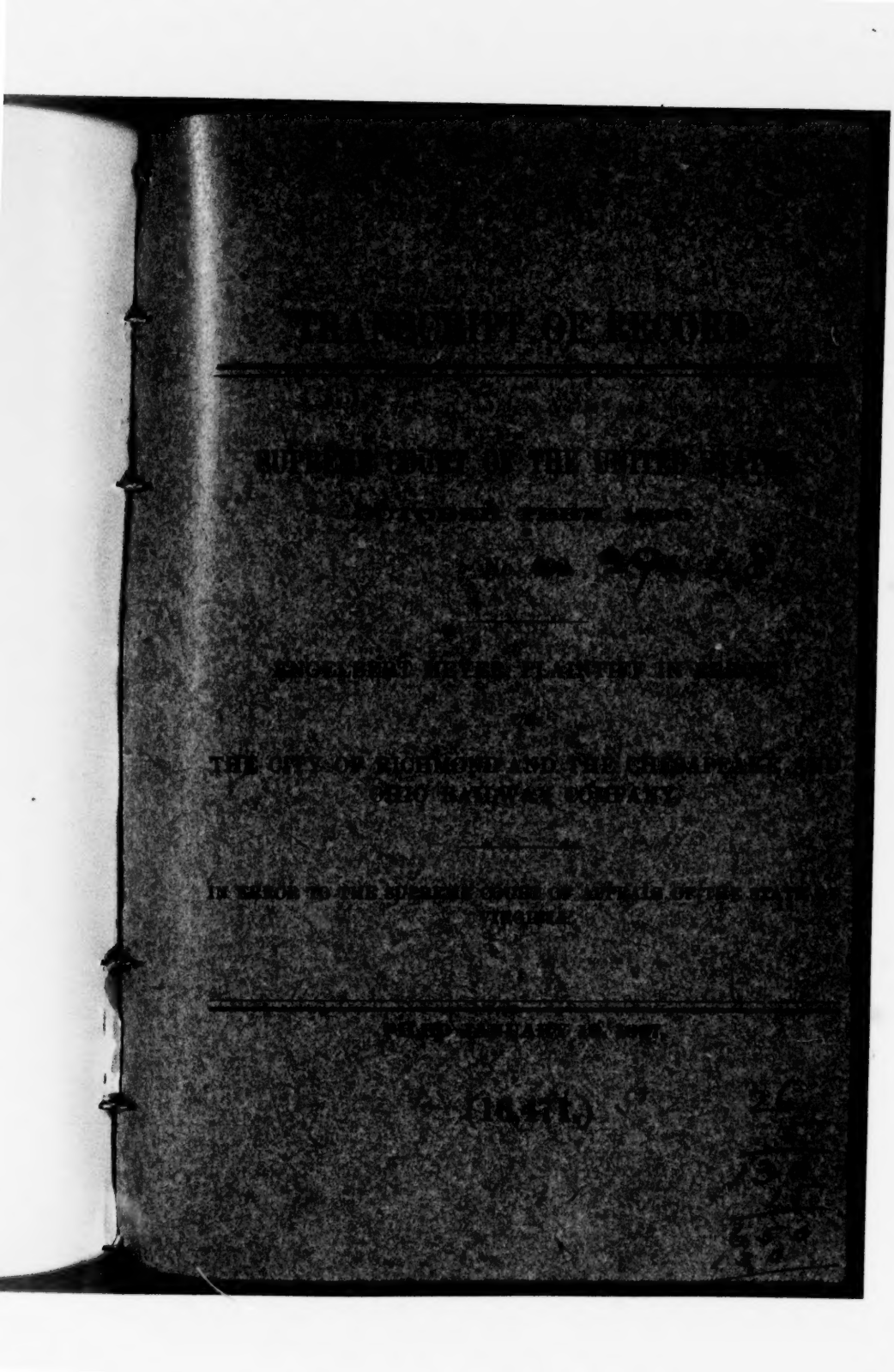

(16,471.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM. 1896.

No. 692.

ENGELBERT MEYER, PLAINTIFF IN ERROR,

vs.

THE CITY OF RICHMOND AND THE CHESAPEAKE AND OHIO RAILWAY COMPANY.

IN ERROR TO THE SUPREME COURT OF APPEALS OF THE STATE OF VIRGINIA.

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1 In the Supreme Court of the United States.

To the honorable justices of the Supreme Court of the United States:

The petition of Engelbert Meyer respectfully represents that he is aggrieved by a final judgement of the supreme court of appeals of Virginia, the highest court of that State, entered on the 20th day of February, 1896, in an action of trespass on the case, wherein he was plaintiff and The City of Richmond, a municipal corporation, and The Chesapeake & Ohio Railway Company, a corporation, were defendants.

A transcript of the record of said judgement is herewith presented, by which it will appear that your petitioner, in the month of August, 1895, filed his declaration in the law & equity court of the city of Richmond, in which he set forth his cause of complaint against the said defendants as follows:

That he was the owner in fee of a lot of land fronting on Eight-street between Cary and Canal streets, on which were located two brick buildings, the first floor of which was used for store purposes and the second story as dwellings; that said property, previous to the obstruction of Eight- street, as hereinafter described, was very profitable as an investment, being continuously rented to good tenants, who promptly paid remunerative rents for the same; that on the 25th day of June, 1886, the city council of Richmond, by ordinance, authorized the Richmond & Alleghany Railway Company to obstruct for the distance of sixty feet (commencing at Canal street in the direction of Cary street) Eight- street, and by virtue of which said railway company wholly obstructed and occupied said street for said distance with its tracks, sheds, fences, etc., except to pedestrians, for whom said company was required to provide by overhead bridge and stairway approaches thereto. It was averred in said declaration that by means of this obstruction, so made by said company by authority of said
2 city, travel along said street was arrested and the property rights of your petitioner, as an abutter upon said street, *was* not only substantially injured, but practically destroyed; that the city had no right under the Constitution and laws of the land to authorize the said railroad company to close said street or place obstructions therein without proper legal proceedings for that purpose and the making of just compensation to suc- abutting owners as might be injured by said action; that this unconstitutional and illegal action rendered said defendants liable to your petitioner, as trespassers on his property, for all damages that he had sustained not common to the public; that the obstruction- were in themselves nuisances which the city was charged with the duty of abating and moving, and that every day's continuation of the same was a new offense; that the rights, privileges, and obligations of said Richmond & Alleghany Railway Company had been legally transferred to and assumed by said Chesapeake & Ohio Railway Company, and that it, the said last-

named company, now maintained the said onstructions and was therefore liable, jointly with said city of Richmond, for the said trespasses. A plat of the *locus in quo* and a copy of said ordinance were made parts of said declaration.

That on the 27th day of December, 1895, the defendants having entered a general demurrer to said declaration and to each court, in which the plaintiff joined, the court gave judgement for said defendants and dismissed the said suit, and on the 31st day of January, 1896, during the same term, the plaintiff moved the court to set aside the said judgement and annul it and render judgement for him on said demurrer "solely on the ground that the act of the General Assembly of Virginia approved May 24th, 1870, providing a charter for the city of Richmond (Acts 1869–'70, p. 120), so far as it is attempted to authorize the passage of the ordinance in the declaration mentioned, as well as said ordinance, was unconstitutional and void because in conflict with the fourteenth
3 amendment of the Constitution of the United States, which prohibits any State from depriving any person of property without due process of law," but the court overruled this motion and refused to set aside said judgement, to which action your petitioner excepted and filed a bill of exceptions, which was signed, sealed, and enrolled as a part of the record.

That on the 20th day of February, 1896, your petitioner presented to the supreme court of appeals of Virginia a petition fully setting forth the foregoing state of facts and insisiting that the said act of the General Assembly and said ordinance were void because in conflict with the fourteenth amendment of the Constitution — the United States, and therefore praying a writ of error to said judgement, and that the same might be reviewed and reversed, but the said supreme court of appeals rejected said petition and refused said writ of error.

Now, your petitioner avers that said judgement of the supreme court of appeals is wholly erroneous and should be reviewed and reversed by this honorable court.

The ground on which the defendants sought to justify the closing of the street which it was admitted caused the damage complained of in the declaration was that section 19 of the act of the General Assembly of Virginia, providing a charter for the city of Richmond (Acts 1869–'70, p. 120), authorized the city council to pass an ordinance closing any street of said city, and that the ordinance, a copy of which is filed with the declaration, was passed in conformity with said charter, while, on the other hand, it was contended by your petitioner that said act of the General Assembly so attempting to authorize the closing of a street without providing some reasonable mode of ascertaining and paying damages to property-holders specially injured thereby was unconstitutional, and therefore void.

4 It was then and is now urged *urged* upon the attention of the court that under the Constitution and laws of the land the free and uninterrupted use of public highways once dedicated to and accepted by the public or acquired by right of eminent domain are for continuous public use, and that the right of access

to and user of such streets by an abutting-property holder is property of which the owner cannot un-er the Federal Constitution be deprived without due process of law. 2 Dillon on Mun. Cor., sec. 587*b* and 587*c*; Tiedman on Mun. Cor., sec. 301; Elliott on Roads and Streets, sec. 658; Taylor's case, 29 Grat., 793; Story *v.* Elevated R. R. Co., 90 N. Y., 122, 178, '9; Larh's case, 104 N. Y., 268.

Any person or corporation diverting the highway from its proper use disturbs the right of property and is a trespasser and must answer in damages at the suit of the owner. Elliott on Roads and Streets, sec. 536; Eliz., Lex. & Big. S. R. R. *vs.* Combs, 10 Bush.

Your petitioner submits that the power granted by the General Assembly in the charter to the city "to close or extend, widen or narrow, lay out and graduate, pave or otherwise improve streets and public alleys in the city" cannot reasonably be tortured into conferring the power to grant to a corporation the right to occupy exclusively a public street for its private benefit with its tracks, sheds, fences, depots, etc., but even if such power could be conferred, yet it could not be so done without providing by due process for condemnation and just compensation to owners of property injured by such closing of the street.

In the case of Scott *vs.* McNeal, 154 U. S., 34, Mr. Justice Gray, speaking for this court, said:

"The fourteenth article of amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains, Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws. These prohibitions extend to all acts of the State, whether through its legislature, its executive, or its judicial authorities, and the first one, as said by Chief Justice Waite in United States *vs.* Cruikshank, 92 U. S., 544, repeating the words of Mr. Justice Johnson in Bank of Columbia *vs.* Okely, 4 Wheaton, 244, was intended to secure the individual from the arbitrary exercise of the powers of argument unrestrained by the established principles of private rights and distributive justice."

The court of appeals of New York, in perhaps the most ably argued case that ever came before that tribunal, speaking on the subject of diverting public highways from their legitimate use, said: "He (the owner of property on the street) is therefore compelled to pay for them at their full value, and if in the next instance they may by legislative authority be taken away or diverted to inconsistent uses a system has been inaugurated which resembles more nearly legalized robbery than any other form of acquiring property. * * * Any law which destroys property or its value or takes away any of its essential attributes deprives the owner of his value." Larh *v.* Met. E. Railway Co., 104 N. Y., 286.

In the case here there was no pretense that there was any effort to assess the damages to which your petitioner was entitled by reason of having his property thus taken, nor was there any claim,

or suggestion even, that there was any law, statute, or ordinance making any provision whatsoever for assessing such damages.

"To construct a railroad in a public highway without compensation to the adjoining owner is the taking of private property for public use without lawful authority and constitutes a nuisance, and every day's continuance of it is a legal wrong." Mahon *v.* N. Y. Cen. R. R. Co., 24 N. Y., 660.

See also Kelly *v.* Kansas City, 69 Mo., 109; Fort Worth *v.* Crawford, 8 A. & E. Coc. cases, 406; Strange *v.* Dubuque, 62 Ia., 303, and Chicago *v.* Robins, 2 Black, 418.

The contention in the court below was that your petitioner could not be heard to complain that his constitutional rights had
6 been infringed, because his declaration showed that his property did not directly abut on that part of the street which was obstructed, establishing this as a criterion by which to test the question of special damage.

It is not denied by your petitioner, but freely admitted, that one of the essential elements of his right to recover in an action of this nature is the fact that he has sustained some special damage to his property by the obstructions placed in the highway. In 1 Addison on Torts, sec. 279, it is laid down that "no one can have an action for an obstruction or nuisance in a common highway without assigning some particular damage to himself individually, independent of general inconvenience to himself as one of the public." The ancient way of stating the principle is this, "Without special grief shown by the plaintiff the action lies not, but is punishable by the leet." Fineux *v.* Horenden, Cro. Eliz., 664.

The cases that recognize this elementary principle are numerous and need not be cited here. Many of them are collected in notes 6 and 7 on page 500 of Elliott on Roads and Streets.

It is true that some of the courts in seeking to find some inflexible rule by which to determine what are general and what special damages have undertaken to draw a hard and fast line between them by making every case turn on the mere physical fact of the property injured abutting on the obstructed part of the street, but your petitioner submits that such is not the determination of the best-considered cases.

Of the English cases on this precise point the one spoken of as the leading case (decided in 1835) is Wilkes *v.* Hungerford Market, 2 Bing. N. C., 281, more fully reported in 2 Scott, 446. The plaintiff, a bookseller, having a shop by the side of a public thoroughfare, Craven street, suffered in his business in consequence of passengers having been diverted from the thoroughfare by an author-
ized obstruction across it. After verdict for the plaintiff for
7 £30 the question was carefully argued on a motion for a nonsuit, and all the cases from the Year Book down were carefully examined. The special damage there alleged and sustained was loss of trade which but for the obstruction the plaintiff would have enjoyed, and for that an action was held to lie. See also Senior *v.* Met. Railway Co., 2 H. & C., 258 (1863).

Benjamin *v.* Starr Law Rep., 9 C. P., 400 (1874); Baker *v.* Moore,

Lord Raym, 491; Iverson *v.* Moore, 1 Lord Raym, 495; Fritz *v.* Hobson, L. R. Ch'y Div., 542, cited in Comyn's Digest (5th edition), vol. 1, p. 278.

The case of Rigney *v.* Chicago, 102 Ill., 64, is directly in point. It was an action on the case instituted to recover damages alleged to have been sustained by reason of construction by the city of a viaduct or bridge along Halstead and across Kenzie streets at their intersection, some 220 feet west of the plaintiff's premises, fronting on Kenzie street, which cut off all communication with Halstead street by way of Kenzie except by means of a pair of stairs at the intersection of these streets. It was held that the city was liable. Mr. Chief Justice Dickey, in discussing the question, concludes thus: "The right of action does not depend upon the distance between the lot and the improvement (obstruction); this depends upon the nature and character of the improvement and upon the question whether the property of the claimant is materially damaged." This principle, thus laid down in this case, has been since approved by the same court in Joliet *v.* Blower, 155 Ill., 416, and the case has been cited approvingly by this honorable court in Chicago *v.* Taylor, 125 U. S., at page 168.

In Penn. C. *v.* Stanley, 10 Ind. Appeal, 421 (decided in 1894), Garin, J., speaking on the precise point, said: "In order to authorize a recovery by appellee it is not necessary that the obstruction should have been immediately in front of or touching upon his real estate."

8 To the same effect is Dantzer *v.* Ind. M. R. Co., 39 N. E. R., 224; S. C., 141; Indiana R., 604, where many of the authorities are reviewed and the conclusion reached that "the obstruction of the easement of access need not always be upon the immediate front of the lot the owner of which is affected, but if the obstruction, though remote, render access to such lot impossible or impairs it in any substantial manner at a point where it abuts upon the street the property right of the lot-owner is invaded, and he may recover."

In Johnston *v.* Old Colony R. R. Co., 28 R. I., 642, the supreme court of Rhode Island, also speaking on this exact point, said: "If a railroad can block up one side without liability for damage, why cannot another railroad block up the other side with equal exemption from liability, and thus leave a man's estate bottled or bagged up without paying damages? There can be no doubt that this lopping off of the approach to one's estate takes value from it; in fact, such approach is the very key of its value. The travel past estates in cities is what in large measure constitutes both their selling and renting value. If one pays his money directly for such approaches, as he does when he buys on a plat approaches that he relies on to be travelled over and make his estate central, why should a railroad appropriate such approaches and deprive him of the right of its becoming central without also paying for it? It is practically robbing one to enrich another, for, though a railroad corporation so far as to entitle it to the right of eminent domain in its behalf, the shareholders are individuals who are enriched by

every such favor granted to it. It is common knowledge that the more centrally located an estate is the more value it is, and that ordinarily, when an estate is removed by one single act and in a single day off of a much-travelled way and isolated and cooped up in a mere *cul-de-sac*, more or less value is thereby taken out of it. Such damage in such a case as the one at bar does not seem to us in-
9 direct or remote, but direct and proximate. It is difficult to conceive what constitutes injury to an estate if lopping off its approaches which one has bought does not."

The supreme court of California in the case of Eachus *v.* Los Angeles R'y Co., 103 Cal., 617, said: "The right of the owner of a city lot to the use of a street adjacent thereto is property which cannot be taken from him for public use without compensation, and any act by which this right is impaired is to that extent a damage to his property. When a city subdivides a tract of land of which it is the owner into blocks and streets and sells the same it thereby dedicates the streets to public use, and the purchaser of one of these lots acquires an easement in the street fronting upon his lot and in which he has a right of property as fully as in the lot itself, and any subsequent act of the municipality by which the easement is destroyed or substantially impaired for the benefit of the public is a damage to the lot itself, within the meaning of the constitutional provision, for which he is entitled to compensation. Such easement is a right of property incident to the lot itself, and any damage sustained by the owner in its destruction or impairment is a damage peculiar to himself and independent of any damage sustained by the public generally."

See also Railroad *v.* Applegate, 8 Denio, 310; Bentley *v.* Atlanta, 92 Ga., 623.

Wherefore your petitioner insists that he is deprived of his constitutional rights, and therefore prays a writ of error to the said supreme court of appeals of Virginia, and that the decision complained of be reviewed and reversed.

And, as in duty bound, your petitioner will ever pray, &c.

ENGELBERT MEYER,
By Counsel.

POLLARD & SANDS, *p. q.*

Richmond, Va.

Writ of error allowed. Bond for $500 for costs.
May 25th, '96.

JOHN M. HARLAN,
Justice Sup. Ct. U. S.

10 [Endorsed:] Engelbert Meyer *vs.* City of Richmond and Ches. & Ohio Railway Co. Petition.

11 VIRGINIA:

In the Supreme Court of Appeals Held in the State Library Building, in the City of Richmond, on Thursday, February 20th, 1896.

The petition of Engelbert Meyer for a writ of error from a judgment rendered by the law and equity court of the city of Richmond on the 31st day of January, 1896, in a suit in which the petitioner was plaintiff and The City of Richmond and The Chesapeake and Ohio Railway Company were defendants, having been maturely considered and the transcript of the record of the judgment aforesaid seen and inspected, the court, being of opinion that said judgment is plainly right, doth reject said petition.

The following are copies of the petition and transcript of record referred to in foregoing order:

Petition.

In the Supreme Court of Appeals of Virginia.

MEYER
vs.
CITY OF RICHMOND and CHESAPEAKE AND OHIO RAILROAD CO.

To the honorable judges of said court:

The petition of Engelbert Meyer respectfully represents that he is aggrieved by a final judgment of the law and equity court of the city of Richmond entered on the 31st day of January, 1896, in an action of trespass on the case, wherein your petitioner was plaintiff and The City of Richmond and The Chesapeake and Ohio Railway Company were defendants.

A transcript of the record of the said judgment is herewith presented, by which it will appear that your petitioner at the August rules, 1896, filed his declaration in the said action in which he set forth the following case:

That he was the owner in fee of a certain lot of land in Richmond city, lying and fronting on Eighth street between Cary
12 and Canal streets, on which were two brick buildings, the first story of which was used for store purposes and the second story as dwellings; that said property previous to the obstructing of the said Eighth street, as hereinafter described, was very profitable as an investment and was easily rented to tenants, who paid promptly good rents for the same; that on the 28th day of June, 1886, an ordinance of the said city of Richmond was approved by the mayor of said city, by which the Richmond and Alleghany Railway Company was authorized to obstruct, for the distance of sixty feet, that part of Eighth street commencing at Canal and running north in the direction of Cary street, by virtue of which said railway company wholly obstructed said street with its tracks, sheds, fences, etc., except as to pedestrians, who might pass and repass these obstructions by means of an overhead bridge

and approaches thereto by stairways; that by means of this interference with the travel along said street the property rights of your petitioner, as an abutter upon said street, were injured and practically destroyed; that the said city had no right under the constitution and laws of the land to authorize the said railroad company to place the said obstructions in said street; that said obstructions were in themselves nuisances which said city was charged with the duty at common law and under its charter to abate and remove, and that every day's continuation of same was a new offence; that the rights, privileges, and obligations of the said Richmond & Alleghany Railway Company had been transferred to and assumed by the said Chesapeake and Ohio Railroad Company, and that for this reason, as well as on account of the nature of the offence complained of, the said Chesapeake and Ohio Railway Company was liable to your petitioner in damages.

13 That a plat showing the *locus in quo* of said property and obstructions and the said ordinance were made parts of the declaration. Your petitioner further shows that on the 27th day of December, 1895, the defendants having before entered a general demurrer to said declaration and to each count, in which the plaintiff joined, the court gave judgment on said demurrer for the defendants and dismissed your petitioner's suit, whereupon your petitioner moved the court to annul its said judgment, and the court, not being then advised as to its decision on said motion, continued the same until the 31st day of January, 1896, when it overruled said motion, and thereupon the plaintiff again moved the court to set aside said judgment "solely on the ground that the act of the General Assembly of Virginia approved May 24th, 1870, providing a charter for the city of Richmond (Acts 1869–'70, p. 120), so far as it authorized the passage of the ordinance in the declaration mentioned, as well as said ordinance, is unconstitutional and void, because in conflict with the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving any person of property without due process of law;" but the court overruled said motion and refused to set aside said judgment; to which action your petitioner excepted and filed a bill of exception, which was signed, sealed, and enrolled, and made a part of the record.

Your petitioner now insists that the said law and equity court erred in sustaining said demurrer to his declaration, and also in refusing to set aside its judgment so holding as set forth in his bill of exception.

Your petitioner therefore humbly submits—

14 That under the constitution and laws of this State the free and uninterrupted use of public highways once dedicated to and accepted by the public or acquired by right of eminent domain are for continuous public use, and that the right of access to and user of such streets by an abutting-property holder is property of which the owner cannot under the Federal Constitution be deprived without due process of law.

(*a.*) A highway once lawfully established is for continuous public use as such. Tiedman on Municipal Cor., sec. 301. "Once a high-

way always a highway" is a maxim of the common law, and not even the legislature can take away such right without compensation. Elliott on Roads and Streets, sec. 658; Taylor's case, 29th Gratt., 793.

This doctrine is expressly recognized in Story *vs.* N. Y. Elevated R. R. Co., 90 N. Y., 122, where the court, at page- 178, '9, said:

"The ownership of such an easement is an interest in real estate, constituting property, within the meaning of that term as used in the constitution of the State, and requires compensation to be made therefor before it can be lawfully taken for a public use." Larh's case, 104 N. Y., 268.

(*b.*) The owner of land abutting on a street "has other rights peculiar to himself which rest upon the relation of his lot to the street, coupled with the further and equally important fact that, by virtue of his ownership of that lot, he is charged with his private share of the expense of improving and maintaining the street in a condition for public use. These rights, which are necessary to the proper enjoyment of his property, are as much property as the land which he owns and equally within the protection of the constitution and laws." Tiedman on Mun. Cor., sec. 301; see also 2 Dillon on Mun. Cor., sec. 587*b* and 587*c*.

15 "This (the easement of access) is so far regarded as private property that not even the legislature can take it away and deprive the owner of it without compensation." Elliott on Roads and Streets, 526.

(*c.*) Any person or corporation diverting the highway from its proper use disturbs the right of property and is a trespasser and must answer in damages at the suit of the owner. Elliott on Roads and Streets, sec. 536, and Elizabeth, Lex. and Beg. S. R. R. *vs.* Combs, 10 Bush., 382.

The said law and equity court in sustaining the said demurrer denied to your petitioner his constitutional rights, and specially so did it in refusing to set aside its judgment when its attention was called to the unconstitutionality of the act of the General Assembly of Virginia approved May 24th, 1870 (Acts 1869, '70, p. 120), so far as it authorized the passage of the ordinance in the declaration mentioned, because in conflict with the fourteenth amendment, which prohibits any State from depriving any person of property without due process of law, there being no mode prescribed in said act of the General Assembly or in said ordinance for the divesting him of his said property rights by any judicial proceedings whatsoever.

The declaration, after alleging the ownership of the lot described, alleges that the defendant The City of Richmond did by an ordinance approved June 28th, 1886, unlawfully close a part of Eighth street, and did unjustly and unlawfully allow the Richmond and Alleghany Railway Company, of which the Chesapeake and Ohio Railway Company was the successor, to erect sheds in and fences across said street, which obstructed the free use of said street, whereby the plaintiff was deprived of the free use of said street as

a highway, and by means of which he was greatly damaged
16 in the use and enjoyment of his property and deprived of great gains therefrom, in the aggregate amounting to $5,000.00.

On demurrer these broad and sweeping statements must be taken as true, and the defense set up was that though true, yet there was no cause of action because the city of Richmond had a right to authorize said railroad company to close said street, even without any process or proceeding whatsoever against your petitioner.

There can be but little dispute as to the proper meaning of the term "due process of law." Mr. Cooley in his work on Constitutional Limitation says: "Due process of law in each particular case means such exertion of the powers of government as the settled maxims of law permit and sanction, and under such safeguards for the protection of individual rights as those maxims prescribe for the class of cases to which the one in question belongs."

Cooley on Con. Lim., p. 441, 4th edition.

The case of Taylor *vs.* Miles, 5 Kan., 498, determines that "due process of law not only requires that a party shall be properly brought into court, but that he shall have the opportunity when in court to establish any fact which, according to the usages of common law or the provisions of the Constitution, would be a protection to him or his property."

Mr. Justice Field in Pennoyer *v.* Neff, 95 U. S., 733, in discussing the scope and meaning of this term, as used in the fourteenth amendment, said:

"Whatever difficulty may be experienced in giving to those terms a definition which will embrace every permissible exertion of power affecting private rights, and exclude such as is forbidden, there can be no doubt of their meaning when applied to judicial proceedings.

17 They then mean a course of legal proceedings according to those rules and principles which have been established in our systems of jurisprudence for the protection and enforcement of private rights. To give such proceedings any validity there must be a tribunal competent by its constitution—that is, by the law of its creation—to pass upon the subject-matter of the suit; and, if that involves merely a determination of the personal liability of the defendant, he must be brought within its jurisdiction by service of process within the State or his voluntary appearance."

This statement of the meaning of the term has but recently been approved in the latest case bearing on this subject, determined in the same court in Scott *v.* McNeal, 154 U. S., 34.

In this last case Mr. Justice Gray, delivering a unanimous opinion of the court, said:

"The fourteenth article of amendment of the Constitution of the United States, after other provisions which do not touch this case, ordains, 'Nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.' These prohibi-

tions extend to all acts of the State, whether through its legislative, its executive, or its judicial authorities—Virginia *v.* Rives, 100 U. S., 313, 318, 319; *Ex parte* Virginia, 100 U. S., 339, 346; Neal *v.* Delaware, 103 U. S., 370, 397—and the first one, as said by Chief Justice Waite in United States *v.* Cruikshank, 92 U. S., 542, 554, repeating the words of Mr. Justice Johnson in Bank of Columbia *v.* Okely, 4 Wheat., 235, 244, was intended "to secure the individual from the arbitrary exercise of the powers of government, unrestrained by the established principles of private rights and distributive justice."

18 In the case here there was no pretense that there was any effort to assess the damages to which your petitioner was entitled for having his property taken, nor was there any provision in the act of the General Assembly or of the city ordinance making any provision whatsoever for assessing such damages.

The court of appeals of New York, in the most celebrated and perhaps the most ably argued case that ever came before that tribunal, said:

"An abutting owner necessarily enjoys certain advantages from the existence of an open street adjoining his property, which belong to him by reason of its location and are not enjoyed by the general public, such as the right to free access to his premises.

These rights are not only valuable to him for sanitary purposes, but are indispensable to the proper and beneficial enjoyment of his property, and are legitimate subjects of estimate by the public authorities in raising the fund necessary to defray the cost of constructing the street. He is therefore compelled to pay for them at their full value, and if in the next instance they may, by legislative authority, be taken away and diverted to inconsistent uses a system has been inaugurated which resembles more nearly legalized robbery than any other form of acquiring property."

"Any law which destroys property or its value or takes away any of its essential attributes deprives the owner of his property." Lahr *v.* Met. Elevated Railway Co., 104 N. Y., 286.

"At common law depreciation of property by agencies that would destroy its value would undoubtedly be a ground for the recovery of damages. The maxim *sic utera tuo ut alienum non leadas* embodies this duty, and the law must enforce it or the maxim would be idle. West. A. R. R'y Co. *v.* Hill, 56 Penn. St., 460. The

19 application of this maxim was made by this court in R., F. & P. R. R. Co. *v.* City of Richmond, 26 Gratt., 83, and affirmed in the Supreme Court in that case. 96 U. S., 521.

In Eliz., Lex. and B. S. R. Co. *v.* Combs, 10 Bush, 382, it was said:

"It being conceded that the owners of adjacent lots have a peculiar private right in the street which is appurtenant to their lots, and as much property as the lots themselves, we cannot escape the conclusion that there may be such an appropriation of the street as will give the lot-owner a private right of action against those who appropriate it, as to exclude him from its reasonable use,

although such appropriation may be expressly authorized by the terms of the legislative or municipal grants."

The Supreme Court of the U. S. has frequently sustained the view contended for under this head. It said in Salt Lake City *v.* Hillister, 119 U. S., 260:

"But the argument is unsound that whatever is done by a corporation in excess of the corporate powers, as defined by its charter, is as though it was not done at all. A railroad company authorized to acquire a right of way by such exercise of the right of eminent domain as the law prescribes which undertakes to and does seize upon and invade, by its officers and servants, the land of a citizen, makes no compensation, and takes no steps for the appropriation of it is a naked trespasser and can be made responsible for the tort. It had no authority to take the man's land or to invade his premises; but if the governing board had directed the act the corporation could be sued for the tort in an action of ejectment or in trespass or on an implied assumpsit for the value of the land. A plea of *ultra vires* in this case would be no defense."

20 Such a holding directly follows the elementary principle that actions for a trespass may be brought either against the hand actually committing the injury or against the person or corporation by whose order or authority the act is done (1 Addison on Torts, sec. 422), from which follows that both as well as either joint tort-feaser may be sued in the same action (1 Barton Prac., 247), and to show a liability on either will entitle the plaintiff to recovery against the one shown to be liable. Davis *v.* Frank, 33 Grattan, 413.

In the court below the defendants relied upon the case of Home Building and Conveyancing Co. *vs.* City of Roanoke, 20 S. E., 895, as authority to justify the city in allowing Eighth St. to be obstructed, but that case cannot be perverted into sustaining any such position. There the learned judge (Cardwell) who delivered the opinion of the court placed the judgment of the court, in denying the liability of the city, expressly on the ground that the city in what it was doing was improving the streets to promote the public good, not allowing "a private corporation to place additional burdens upon the servitude of a public highway for private gain." See opinion on p. 897. Judge Cardwell wisely recognized the same distinction that the Supreme Court made in Taylor *v.* Chicago (125 U. S., 164, in distinguishing the case of Transportation Company *v.* Chicago (99 U. S., 635) from Pumpelly *v.* Green Bay Co. (13 Wall., 166). Let the court read the ordinance, and if it can say that the city council had in view the improvement of the streets, then let the judgment be affirmed.

The practical effect of the ordinance was to make Eighth street from Cary south to the obstruction (on which the plaintiff's lot abutted) a mere *cul-de-sac.* If it was legal to close Eighth St. at its entrance into Canal, it was equally legal to close it at its

21 entrance into Cary, and thus deprive your petitioner of all access to his property, for there is no alley in the rear of his

lot through which he could "eke out an inconvenient access with the outside world."

"To construct a railroad in a public highway without compensation to the adjoining owner is the taking of private property for public use without lawful authority and constitutes a nuisance—a perpetual nuisance—and every days' continuance of it is a legal wrong." Mahon *v.* N. Y. Central R. R. Co., 24 N. Y., 660; see also Kelly *v.* Kansas City, 69 Mo., 109; Fort Worth *v.* Crawford, 8 A. & E. Cor. cases, 406; Strange *v.* Dubuque, 62 Ia., 303, and Chicago *v.* Robbins, 2 Black, 418.

In Balto. & Pat. R. R. *v.* Fifth Bap. Church, 137 U. S., 568, the Supreme Court approved the elementary principles stated by Blackstone:

"Indeed, every continuance of a nuisance is held to be a fresh one, and therefore a fresh action will lie." 3 Black. Com., 220.

By a continuation of the nuisance complained of in the declaration by the defendant company, authorized by the defendant city, the plaintiff has suffered the damages alleged, which damages by the demurrer are admitted and for which he asked redress.

The defendant company is liable for the whole injury, for "a person contributing to a tort, whether his fellow-contributors are men, natural or other forces or things, is responsible for the whole, the same as though he had done all without help." Bishop on Non-contract Law, sec. 518, 525.

And the defendant city is likewise liable, for "a corporation has no more right to license or maintain a nuisance than an in-
22 dividual would have" (Dillon on Mun. Cor., 374, 1048, note z). "The King cannot license the erection or commission of a nuisance, nor can a municipal corporation do so." Dillon on Mun. Cor., sec. 660, 1038, note 1.

All of these elementary principles were approved by this court in the cases of Norfolk *v.* Chamberlaine, 29th Gratt., 534, and Chalkley *v.* City of Richmond, 88 Va., 402.

For these reasons your petitioner prays that the said judgment of the law and equity court of the city of Richmond may be reviewed and reversed.

ENGELBERT MEYER.

POLLARD AND SANDS,
Counsel for Petitioner.

I, Henry R. Pollard, an attorney practicing in the supreme court of appeals of Virginia, do certify that in my opinion the judgment complained of in the foregoing petition should be reviewed and reversed.

Given under my hand this 14th day of February, 1896.

HENRY R. POLLARD.

Transcript of Record.

VIRGINIA:

Pleas before the Honorable Edmund C. Minor, judge of the law and equity court of the city of Richmond, held at the court-room, in said city, on Saturday, the 31st day of January, 1896.

Be it remembered that heretofore, to wit, at rules held in the clerk's office of the law and equity court of the city of Rich-
23 mond on the first Monday in August, 1895, came Engelbert Meyer and filed his declaration against The City of Richmond and the Chesapeake and Ohio Railway Co., a corporation created under the laws of Virginia, defendants; which declaration is in the words and figures following, to wit:

Declaration.

In the Law and Equity Court of the City of Richmond.

Engelbert Meyer, plaintiff, complains of The City of Richmond and The Chesapeake and Ohio Railway Co., a corporation created under the laws of Virginia, defendants, of a plea of trespass on the case for this, to wit, that the defendants The City of Richmond long before and on the 28th of June, 1886, was and from thence hitherto has been and still is a municipal corporation chartered by the General Assembly of Virginia by an act approved May 24th, 1870 (Acts 1869–'70, p. 120), clothed with all powers conferred and subject to all the duties and liabilities imposed by its charter and incident to its incorporation, and thereby it became and was the duty of said city of Richmond to keep in good order for the use and benefit of the public, and specially for the adjacent owners, the streets and public highways in said city and to prevent and remove any and all structures, obstructions, and encroachments in any street, alley, or sidewalk thereof, and particularly in Eighth street from Cary street to Canal street, in the city of Richmond aforesaid, which said Eighth street between said Cary street and Canal street was on the day and year aforesaid and from thence hitherto has been and still is not in good order and free from obstructions and encroachments and is unserviceable for said purposes; and whereas the plaintiff on the — day of ——, 189–, was and still is lawfully seised in fee-simple of a certain messuage and premises, on which is
24 built two brick store-houses and dwellings over said stores, with the appurtenances, situate and being in the city of Richmond, at the southwest corner of Cary and Eighth streets, and bounded as follows, to wit: Beginning on the west side of Eighth street at its intersection with the south line of Cary street, running thence southerly along the west line of Eighth street thirty-eight feet four inches; thence at right angles to Eighth street and running westerly parallel with Cary street fifty feet; thence running northerly and parallel with Eighth street thirty-eight feet four inches to Cary street, and thence running easterly along the south

line of Cary street fifty feet to the place of beginning, and being the same real estate conveyed to the said Englebert Meyer by Ellis Brown and Virginia, his wife, by deed dated 12th day of April, 1859, and duly recorded in the clerk's office of Richmond chancery court in Deed Book 74 A, page 18, and particularly described in the plot hereto attached as a part of this declaration, adjacent to and abutting on said highway known as Eighth street, in said city, by means of which public highway the plaintiff, his tenants, agents, servants, and all others, on foot, in carriages, wagons, and other vehicles, had free access and approach to said messuage and premises from the direction of Canal street and so back again at all times of the year at their will and pleasure, yet the said defendants, well knowing the premises, to wit, on the day and year aforesaid, wrongfully and unjustly placed divers fences and other structures across the said highway known as Eighth street at a point, to wit, two hundred and fifty-one feet south of Cary street and — feet north of the face of the north wall of the old canal, which fences and other said structures obstructed and closed the said highway and
25 prevented the plaintiff, his tenants, agents, servants, and others, from having the free use of said highway as he and they might otherwise have had, and by means of the premises the plaintiff has also from thence hitherto been deprived of the use of his said store and dwelling upon said messuage and of large gains, profits, benefits, and advantages in the way of rent which he might and otherwise would have acquired from the said stores and dwellings, to wit, of the sum of fifteen hundred dollars, and by means whereof the value of said property has been and is greatly diminished to a great extent, to wit, to the sum of two thousand dollars, and whereby the plaintiff has been and still is greatly annoyed and incommoded in the renting, use, and enjoyment of said messuage and premises and has been and still is by means of the premises otherwise greatly injured and damnified.

And for this also, that heretofore, to wit, *that* the said defendant, The City of Richmond, long before and on the 28th day of June, 1886, was and from thence hitherto has been and still is a municipal corporation chartered by the General Assembly of Virginia, clothed with all powers conferred and subject to all the duties and liabilities imposed by its charter and incident to its corporation, and thereby it became and was the duty of said city of Richmond to keep in good order for the use and benefit of the public, and specially for the adjacent owners, the streets and public highways in said city and to prevent and remove any and all structures, obtructions, and encroachments in any street, alley, or sidewalk thereof, and particularly Eighth street from Cary street to Canal street, in the city of Richmond aforesaid, which said Eighth street between said Cary and Canal streets was on the day and year aforesaid and from thence hitherto has been and still is not in good order and free from obstructions and encroachments and is unserviceable
26 as a public street and highway; and whereas the plaintiff on the — day of ——, 189–, was and still is lawfully seized in fee-simple of the messuage and premises in the first count partic-

ularly described, yet the said defendants, well knowing the premises, whilst the plaintiff was the owner of said messuage and premises, with the appurtenances, and whilst there was such obstructions in said highway as aforesaid, to wit, from the — day of ——, 189–, to the bringing of this suit, wrongfully and unjustly permitted certain structures, sheds, and fences to be and continue in and across said highway known as Eighth street at a point between Cary street and Canal street, whereby the plaintiff, his tenants, agents, servants, and others, were prevented from having the free use of said highway as he and they might otherwise have had, and also by means of the premises the plaintiff from thence and hitherto has been deprived of the use of his store & dwelling standing upon said messuage and of large gains, profits, benefits, and advantages which he might and would have otherwise acquired from the use and rent of the same, to wit, of the sum of fifteen hundred dollars, and by which means the value of said property of the plaintiff has been and is greatly damaged and diminished to the extent of two thousand dollars, and the plaintiff thereby has been and still is greatly annoyed and incommoded in the renting, possession, use, occupation, and enjoyment of the said messuage and premises and has been and still is by means of the premises otherwise greatly injured and damnified.

And for this also, that heretofore, to wit, on the twenty-eighth day of June, 1886, the said defendant city, being charged with the duty of keeping the streets of said city in good order and with the duty of preventing obstructions in and compelling the removal of obstructions from said streets, did, by an ordinance approved
27 June 28th, 1886, herewith filed, unlawfully close a part of said Eighth street, and did unjustly and unlawfully allow the Richmond and Alleghany Railroad Company, a corporation created under the laws of Virginia, to erect, and said Richmond and Alleghany Railway Company did erect, certain structures, sheds, and fences across Eighth street at a point, to wit, two hundred and fifty-one feet south of the southern line of Cary street and — feet north of the face of the north wall of the old canal, the ownership and occupation of which said structures, sheds, and fences on the — day of ——, 1888, became and were duly vested in another certain corporation known as the Richmond and Alleghany Railway Company; and thereafter, to wit, on the 20th day of January, 1890, in pursuance of an act of the General Assembly approved December 18th, 1889 (Acts 1889–'90, p. 2, private acts), the ownership and occupation of said structures, sheds, and fences became and were duly vested in the defendant The Chesapeake and Ohio Railway Company, which said structures, sheds, and fences from thence and still are occupied, maintained, and kept by said Chesapeake and Ohio Railway Company; and the plaintiff avers that said structures, sheds, and fences, on the — day of ——, 189–, and from that date to the bringing of this suit, have obstructed the free use of said Eighth street from Cary to Canal street; and whereas the plaintiff was seised in fee-simple estate of the messuage and premises in the first count particularly described, yet the said defendants, well knowing the premises and whilst the plaintiff was

lawfully seised of said messuage and premises, with the appurtenances, and whilst said obstructions remained in said street as aforesaid, to wit, from the — day of ——, 189-, to the bringing of this suit, wrongfully and unjustly permitted the said obstructions to be and continue in said street, and by means of the prem-
28 ises the plaintiff, who, with his tenants, agents, and others, *were* entitled to the free and uninterrupted use of the said street with his and their carriages, wagons, and other vehicles, was prevented by said obstructions from passing and repassing to and from his said messuage and premises in and from the direction of Canal street, and thereby the plaintiff has been and still is deprived of the free use of said street and highway and by means of which he is greatly hindered and damaged in the use and enjoyment of his messuage and premises and deprived of large gains and advantages which he might otherwise have acquired by the renting of the said store and dwelling situate on said messuage and premises, to wit, of the sum of fifteen hundred dollars, by which means the said property of the plaintiff has been and is diminished in its value to the extent of two thousand dollars; and the plaintiff thereby has been unable to rent said property and has been and still is greatly annoyed and injured and put to great trouble and expense, to wit, the sum of two hundred dollars, in and about finding a tenant to occupy said stores and dwellings, and has also laid out and expended large sums of money, to wit, the sum of one hundred dollars, in and about preserving said property from depredations while unoccupied, and by means of the premises is otherwise greatly injured and damnified, to the plaintiff's damage $5,000.00, and therefore he sues, &c.

POLLARD AND SANDS, *p. q.*

Ordinance permitting the Richmond and Alleghany Railroad Company to close a certain portion of Eighth street and requiring them to erect a foot-bridge.

29 (Approved June 28th, 1886.)

Be it ordained by the city council of Richmond—

First. So much of Eighth street as lies between the present southern boundary line of the property of the Richmond and Alleghany Railroad Company, being also the southern boundary line of the right of way of the James River and Kanawha Company, and a line drawn across Eighth street at right angles, sixty feet north of the face of the north wall of the canal as said wall is now built, shall be, and the same is hereby, closed from the 31st day of August, 1886, until it is required to be reopened in accordance with the provisions of this ordinance: Provided, that the said Richmond and Alleghany Railroad Company shall, on or before the said 31st of August, begin to erect an overhead foot-bridge across the tracks and canal of said railroad on that portion of Eighth street above described, and shall complete the same by the 30th day of September, 1886.

Second. The said bridge and the stairways thereto shall be twelve feet wide, and shall be so located, and shall be of such material or materials, designed, security and capacity, as may be required by the city engineer; the same shall always be kept and maintained in such condition and repair as may be from time to time required by the committee on streets of the said city council, and always be open to the free use of the public.

Third. Should the said company fail for the space of ten days to put the said bridge or stairways in such condition or repairs, after having been required so to do by said committee, then the said company shall be liable to a fine of fifty dollars, to be imposed by the police justice of Richmond, and each day's failure to be a separate offence; and the city may in all such cases repair said bridge or stairways, when not done by said company as herein re-
30 quired, and the expense thereof shall be a debt against the said company recoverable as debts are now recoverable by the city of Richmond.

Fourth. The said company, by exercising the privileges herein granted, doth hereby agree and bind themselves to indemnify and save harmless at all times the said city from any loss or damage suffered by reason of any one being injured in any manner in using said bridge or stairways, or by reason of the building or existence of the same, and shall pay to the city any amount or amounts recovered against said city by any judgment or judgments given on account of any such injuries.

Fifth. The above-described portion of Eighth street shall remain closed until the said Richmond and Alleghany Railroad Company shall have been ordered by the ordinances of two successively elected councils to remove the said overhead bridge, and restore the street to its present condition, and to the same authority and control of the city as existed prior to the passage of this ordinance. Whenever it is so ordered to be reopened, the said company shall be allowed three months from the date of the passage of the last of the said two ordinances in which to remove said bridge and stairways, and to restore said Eighth street to the same condition in which it was before the passage of this ordinance. And should the said company fail to remove said bridge and stairways, and to restore said Eighth street to its former condition, before the expiration of the said three months, then the said company shall be liable to a fine of one hundred dollars, and each day's default shall be a separate offence; and the said city may remove said bridge and stairways, and restore said Eighth street as above mentioned, when not done by said company as above required, and the ex-
31 pense thereof shall be a debt against the said company, recoverable as debts are now recoverable by the city of Richmond.

Sixth. The said company doth, by exercising the privileges herein granted, agree and bind itself and its assigns to make no claim to the land now occupied by that portion of said Eighth street to be closed, on account of said closing or the privileges herein granted, and doth fully recognise and admit the right of the

FOLD-OUT IS TOO LARGE TO BE FILMED

said city to reopen the said Eighth street at any time, according to the provisions of this ordinance.

Seventh. Nothing in this ordinance shall conflict in any way with the ordinance approved May 12th, 1886, granting permission to the Richmond and Chesapeake Railroad Company to construct a tunnel under Eighth street; and should the bridge constructed under this ordinance obstruct in any manner the said tunnel or tracks leading thereto, it shall be changed by the said Richmond and Alleghany Railroad Company within sixty days after receipt of notice from the committee on streets of the said city council, requiring such change to be made.

A copy.

Teste: BEN. T. AUGUST, *City Clerk.*

(Here follows diagram marked page 32.)

33 Whereupon, the defendants being summoned and not appearing, on motion of the plaintiff, by counsel, it was ordered that judgment be entered for the plaintiff against the defendants for what damages the plaintiff had sustained by occasion of the injury done to the plaintiff by the said defendants in the declaration mentioned unless the defendants should appear and plead to issue at the then next rules.

At which day, to wit, at rules held in the clerk's office of the law and equity court of the city of Richmond on the third Monday in August, 1895.

The defendant still failing to appear, on motion of the plaintiff, by counsel, it was ordered that the last order made against said defendants in this case be confirmed, and that the plaintiff's damages be ascertained by a jury at the then next term.

At another day, to wit, at a law and equity court of the city of Richmond held for the said court on Friday, the 27th day of December, 1895.

This day came again the parties, by their attorneys, and the defendants' demurrer to the plaintiff's whole declaration and to each count thereof entered therein on the 9th day of September, 1895, and on the joiner in said demurrer by the plaintiff, and by consent of parties, by counsel, the map filed with the declaration and the ordinance of the council of the city of Richmond closing a certain portion of Eighth street, approved June 28th, 1886, being considered by the court as a part of the declaration and each count thereof, and to be so considered by the appellate court, and, being fully argued by counsel, it seems to the court that the declaration and the matters therein contained are not sufficient in law for the plaintiff to have and maintain his action against the defendants, the court doth sustain the said demurrer, and it is considered by the court that the plaintiff take nothing by his bill, but that the defendants go thereof without day and recover against the plaintiff their costs by them about their defence in this behalf expended.

And thereupon the plaintiff, by counsel, moved the court to set

aside the said judgment and enter judgment for him on said demurrer, and it being represented to the court that it is the
34 intention of the plaintiff in the case of H. Wythe Davis against The City of Richmond and The Chesapeake and Ohio Railway Company to apply for a writ of error to the judgment of this court entered this day in that cause, and the questions involved in that case being the same as in this case, the court takes time to consider of said motions, and by consent of parties this case is retained on the docket of this court, and the determination of said motions to await the result of the application for a writ of error in the case of H. Wythe Davis against The City of Richmond and The Chesapeake and Ohio Railway Co.

And at another day, to wit, at a law and equity court held for the city of Richmond on the 31st day of January, 1896.

ENGELBERT MEYER, Plaintiff,
vs.
CITY OF RICHMOND and CHESAPEAKE AND OHIO RAILWAY COMPANY, Defendants. } Order.

This day came the parties again, by their attorneys, and the court, being now advised of its judgment to be rendered herein, on the motion of the plaintiff to set aside the judgment rendered on the demurrer to the plaintiff's declaration and to each count thereof, doth refuse to set aside said judgment.

And thereupon the plaintiff again moved the court to set aside said judgment entered on the 27th day of December, 1895, sustaining defendants' demurrer to the declaration and to each count thereof, solely on the ground that the act of the General Assembly of Virginia approved May 24th, 1870, providing a charter for the city of Richmond (Acts 1869–'70, p. 120), so far as it authorized the passage of the ordinance in the declaration mentioned, as well as said ordinance, is unconstitutional and void, because in con-
35 flict with the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving any person of property without due process of law, and therefore there was no warrant of law for the closing of said street as claimed by said defendants; but the court overruled said motion and refused to grant said motion and to set aside said judgment; to which action of the court the plaintiff excepted and filed his bill of exception, which was signed, sealed, and enrolled, and made a part of the record.

ENGELBERT MEYER
vs.
CITY OF RICHMOND and CHESAPEAKE AND OHIO RAILWAY COMPANY. } Bill of Exception.

Be it remembered that this day, after the court had overruled the motion of the plaintiff submitted to the court on the 27th day of December, 1895, to set aside its judgment then entered on the de-

murrer, the plaintiff again moved the court to set aside and annul said judgment solely on the ground that the act of the General Assembly of Virginia approved May 24th, 1870, providing a charter for the city of Richmond (Acts 1869–'70, p. 120), so far as it authorized the passage of the ordinance in the declaration mentioned, as well as said ordinance, is unconstitutional and void, because in conflict with the fourteenth amendment of the Constitution of the United States, which prohibits any State from depriving any person of property without due process of law; but the court overruled said motion and refused to set aside said judgment; to which ruling of the court the plaintiff excepted and filed his bill of exception, which he prays may be signed, sealed, and enrolled and made a part of the record, which is accordingly done.

36 E. C. MINOR. [SEAL.]

To C. V. Meridith, att'y for City of Richmond, and Henry Taylor, att'y for Chesapeake and Ohio Railway Company:

Take notice that I shall apply to the clerk of the law and equity court of the city of Richmond for a transcript copy of the record in the suit lately pending in the law and equity court of the city of Richmond, in which said City of Richmond and The Chesapeake and Ohio Railway Company were defendants and I was plaintiff, and in which judgment was rendered in your favor, for the purpose of having the said judgment reviewed by the supreme court of appeals.

Yours very respectfully, ENGELBERT MEYER,
By Counsel.

We accept service of foregoing notice.

CITY OF RICHMOND,
By C. V. MEREDITH.
C. & O. R'Y CO.,
By H. TAYLOR, JR., *Of Counsel.*

I, P. P. Winston, clerk of the law and equity court of the city of Richmond, do hereby certify that the within is a complete transcript of the record of the case of Engelbert Meyer *vs.* The City of Richmond and The Chesapeake and Ohio Railway Company, and that the said City of Richmond and the Chesapeake and Ohio Railway Company have had due notice of the intention of Engelbert
37 Meyer to apply for such transcript and for a writ of error and supersedeas to the judgment from the supreme court of appeals of the State of Virginia.

Witness P. P. Winston, clerk, this fifth day of February, 1895.

Teste: P. P. WINSTON, *Clerk.*

Fee for record, $4.50.

A true transcript of the record.

Teste: GEO. K. TAYLOR, *C. C.*

The fee of the clerk of the supreme court of appeals of Virginia, at Richmond, is eight dollars and ten cents.

STATE OF VIRGINIA, *City of Richmond,* } *To wit:*

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is a true transcript of the record in the case of Engelbert Meyer against The City of Richmond and The Chesapeake and Ohio Railway Company, in which a writ of error was refused by the supreme court of appeals of Virginia.

Seal Supreme Court of Appeals of Virginia, Richmond.

In testimony whereof I hereto set my hand and annex the seal of said court this 28th day of May, 1896.

GEO. K. TAYLOR,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

38 [Endorsed:] Engelbert Meyer *vs.* City of Richmond and Chesapeake & Ohio Railway Company. Record.

39 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of Ameica to the honorable the judges of the supreme court of appeals of the State of Virginia, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Engelbert Meyer, plaintiff, and The City of Richmond and The Chesapeake & Ohio Railway Company, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty or statute of
40 or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Engelbert Meyer, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distintly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court, at Washington,

within 30 days from the date hereof, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

41 STATE OF VIRGINIA, } *To wit:*
City of Richmond, }

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that a copy of the within writ of error is on file in my office.

Given under my hand this 28 May, 1896.

GEO. K. TAYLOR,
Clerk of the Supreme Court of Appeals of Virginia, at Richmond.

42 Know all men by these presents that we, Engelbert Meyer, of the city of Richmond and State of Virginia, as principal, and H. Wythe Davis, of the same place, as sureties, are held and firmly bound unto the City of Richmond and the Chesapeake and Ohio Railway Company, corporations duly chartered, &c., in the full and just sum of five hundred dollars, to be paid to the said City of Richmond and the Chesapeake and Ohio Railway Company, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this 23d day of May, in the year of our Lord one thousand eight hundred and ninety-six.

Whereas lately, at a supreme court of appeals of the State of Virginia, in a suit depending in said court between the said Engelbert Meyer and the said City of Richmond and The Chesapeake and Ohio Railway Company, a decree was rendered against the said Engelbert Meyer, and the said Engelbert Meyer having obtained a writ of error to the Supreme Court of the United States of America and filed a copy thereof in the clerk's office of the said court
43 to reverse the said decree in the aforesaid suit, and a citation directed to the said City of Richmond and Chesapeake and Ohio Railway Company, citing and admonishing them to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date thereof;

Now, the condition of the above obligation is such that if the said Engelbert Meyer shall prosecute his said writ of error to effect and

answer all costs if he fail to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

ENGELB. MEYER. [SEAL.]
H. WYTHE DAVIS. [SEAL.]
—— ——. [SEAL.]

Sealed and delivered in presence of—
WM. FLEGENHEIMER.
A. J. PLEASANTS.

Approved by—
JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

In the Clerk's Office of the Supreme Court of Appeals of Virginia, at Richmond, on the 28th day of May, 1896.

I, George K. Taylor, clerk of the supreme court of appeals of Virginia, at Richmond, do hereby certify that the foregoing is
44 a true copy of the original bond, which is on file in my office.

Given under my hand this 28th May, 1896.

GEO. K. TAYLOR,
Clerk Supreme Court of Appeals of Virginia, at Richmond.

45 UNITED STATES OF AMERICA, *ss:*

To the City of Richmond and the Chesapeake & Ohio Railway Company, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within 30 days from the date hereof, pursuant to a writ of error filed in the clerk's office of the supreme court of appeals of the State of Virginia, wherein Engelbert Meyer is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable John M. Harlan, associate justice of the Supreme Court of the United States, this 26th day of May, in the year of our Lord one thousand eight hundred and ninety-six.

JOHN M. HARLAN,
Associate Justice of the Supreme Court of the United States.

46 On this second day of June, in the year of our Lord one thousand eight hundred and ninety-six, personally appeared in the city of Richmond before me, the subscriber, John T. Hughes, Jr., deputy sheriff of the city of Richmond, and makes oath that he delivered a true copy of the within citation to R. M. Taylor, mayor of the city of Richmond, and to Chas. E. Potts, cashier of

the Chesapeake & Ohio Railway Company, the said Potts being a resident of the city of Richmond.

J. T. HUGHES, JR., *Deputy*,
For J. T. HUGHES,
Sheriff City of Richmond, Va.

Sworn to and subscribed the 2d day of June, A. D. 1896.

CHAS. O. SAVILLE,
N. P. for the City of Richmond.

Notary fee.....	50 cts.
Sh'ff.....	1 00
	$1 50

Endorsed on cover: Case No. 16,471. Virginia supreme court of appeals. Term No., 692. Engelbert Meyer, plaintiff in error, *vs.* The City of Richmond & The Chesapeake and Ohio Railway Company. Filed January 19, 1897.